

**Before the
Federal Communications Commission
Washington, DC**

In the Matter of)	
)	
Request for Review of the Decision of)	
the Universal Service Administrator by)	
)	
Facility Solutions Group, Inc.)	File Nos. SLD-76002
(Mesquite Independent School District))	
Dallas, TX)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

PETITION FOR RECONSIDERATION

Pursuant to section 1.106 of the Commission's rules, the petitioner, Facility Solutions Group, Inc. (FSG) Inc., by its undersigned representative, respectfully requests reconsideration of the decision of the Wireline Competition Bureau (Bureau) to deny FSG's appeal of the decision of the Universal Service Administrative Company (USAC) in the above-captioned matter.¹ For the reasons set forth and discussed below, FSG asks the Bureau to reverse its previous decision or, alternatively, to waive the Commission's rules to the extent necessary to grant the relief requested in FSG's appeal.

The Bureau should accept this petition because FSG did not have the opportunity to make two important arguments to the Bureau in support of its appeal. That is because they were unknown to FSG until after its last opportunity to present them to the Bureau. FSG could not have learned of either one of them through the exercise of ordinary diligence prior to such opportunity. They address, respectively, the two issues upon which it now appears this entire matter turns.

¹ See *Public Notice*, DA 16-1320 (rel. November 30, 2016), attached as Exhibit 1, and FSG's Request for Review, attached as Exhibit 2.

I. GROUNDS FOR PETITION UNDER SECTION 1.106

In its Notification of Improperly Disbursed Funds Recovery Letter and later in its Decision on Appeal, USAC decided that 54 of the school district's cable drops were ineligible for E-rate support because they were being used for video security cameras.² That was the sum and substance of USAC's decision. USAC did not explain why a video security camera connected to a line of cable would render an otherwise eligible line of cable ineligible.

Cable drops are internal connections. Internal connections installed at eligible locations for an eligible purpose are eligible. There was no dispute about the locations of the cable drops being eligible. Thus only one issue remained: whether school safety and security remained an "eligible purpose" under program rules. Since the Commission has made it very plain that school safety and security is an "eligible purpose," that is what FSG argued in its appeal to the Bureau.³

In a Public Notice ("PN"), the Bureau rejected FSG's appeal. Surprisingly, the Bureau did not address the "educational purpose" issue. Instead, the Bureau took an entirely different tack. Rather than deciding whether school safety and security remains an "educational purpose" for which otherwise eligible internal connections may be used, the Bureau compared the central issue in the appeal to an issue in *Batesville Community School Corporation ("Batesville")*,⁴ which involved a request to waive Commission rules for ineligible data plans/air cards on the grounds that the service was going to be used for public safety purposes. *Batesville* is clearly inapposite.

² See Exhibit 2 at p.11 (Notification) and p.19 (Decision) of the PDF document.

³ See Exhibit 2, at pp. 2 -3 (Commission cited the customary activity of security guards, which includes monitoring video from security cameras, as an example of what constitutes an "educational activity.")

⁴ PN at n.27: "*Requests for Waiver of Decisions of the Universal Service Administrator by Batesville Community School Corporation et al.; Schools and Libraries Universal Service Support Mechanism; Modernizing the E-rate Program for Schools and Libraries*; CC Docket No. 02-6, WC Docket No. 13-184, Order, 31 FCC Rcd 7731, 7733-34, paras. 6-9 and notes 21-22 (WCB 2016) (denying waivers for failure to demonstrate special circumstances, and reiterating the Commission's determination that E-rate is not required to support all services that could further public safety without taking other factors and program goals into account)."

(Emphasis added).

FSG's appeal was not a request to establish a new, "public safety at school" category of service eligible for E-rate support. [This is something that the Commission may want to consider seriously in the future, but it is not the issue here.] FSG simply asked the Bureau to confirm the Commission's longstanding policy of providing E-rate support for internal connections when schools use them for an "educational purpose," such as safety and security. FSG could not possibly have known that its appeal would turn, in whole or in part, on what the Commission had decided in *Batesville*, because the facts and the issue there were completely different. Therefore, the Bureau should entertain this petition and permit FSG to address the issue here.

In addition to the reason discussed above, there is another, equally important reason for entertaining this petition. After the Bureau released the PN, some highly relevant, new information came to light. FSG discovered that an incorrect assumption might have influenced the Bureau's decision or possibly even determined its outcome – namely, that the school district used dedicated lines to connect its video security cameras to its data network. That is not the case. Since USAC never raised this as an issue and the only dispute appeared to be over the definition of "educational purpose," there was no reason, before now, for FSG to delve into it at any length.

II. THE PN DECISION IS INCORRECT BECAUSE IT RELIES ON PRECEDENT THAT DOES NOT APPLY, RATHER THAN ON THE E-RATE ELIGIBILITY RULES AND POLICIES THAT DO APPLY.

A. The Bureau Misconstrued FSG's Appeal, Leading It To Reject The Appeal Incorrectly On The Basis Of Precedent That Does Not Apply.

FSG has never argued that internal connections used to help keep schools safe and secure should become a new category of service eligible for universal support under Section 254 (c)(1)(A) ("public safety). Nevertheless, the Bureau decided independently to review this case as if it were a request to establish a new universal service under Section 254 (c)(1)(A) ("public safety) or possibly Section 254 (c)(3) ("Special Services").⁵

Consequently, this is FSG's first opportunity to address the issue that led the

⁵ *Ibid.*

Bureau to reject its appeal. What FSG has argued, and argued consistently, is that internal connections, already conditionally eligible for E-rate support under USF rules, remain eligible under the rules, Section 254 (c)(1)(A) (“education”) included, when its purpose is to support safety and security activities on school property, an “educational purpose” as the Commission has defined that term. Therefore, whether the Commission should establish an entirely new category of universal service eligible for support under Section 254 (c)(1)(A)(“public safety) for internal connections to video security cameras is not the issue here.

The reasoning in *Batesville*, “*E-rate is not required to support all services that could further public safety without taking other factors and program goals into account*,” which the Bureau relied on to deny FSG’s appeal, does not apply here. FSG did not argue in its appeal, as the appellant in *Batesville* did, that an otherwise ineligible service (cost-ineffective, individual data plans/air cards) ought to be eligible for support, if the service was going to be used for public safety purposes. Rather, FSG argued that internal connections, which are always conditionally eligible, become fully eligible when they are used at an eligible location for an educational purpose, such as school safety and security.

We agree fully with the Bureau that E-rate is not required to support all services that a school uses to further public safety. However, the rules do require the Commission to support some services like that – internal connections that schools use to help keep everyone at school safe and secure for example. That is because school safety and security is an “educational” purpose.⁶ Since this is the issue on appeal, and the Bureau did not address it in its PN, we respectfully request that the Bureau do so now.

Briefly, as we discussed in our appeal, it is well established that otherwise eligible services are only eligible for E-rate support if they are used on school property for an educational purpose. Long ago, when the Commission tasked itself with defining the term, “educational purpose,” it decided that the term covers broadly any activity customarily performed at school. Consequently, any otherwise eligible service, a cable drop for example, that a school uses in conjunction with one of these customary activities,

⁶ See fn. 2 *infra* and fns. 6 and 7 *supra*.

is eligible for E-rate support.

Regardless of how large a school is or where it is located, activities related to the school's security and safety customarily occur there. Plus, it is obvious that very little "education" is going to occur in a school that is not safe and secure. Thus it is obvious why the Commission has long considered school safety and security to be an "educational purpose." The question, therefore, is this: Since the school district was using the 54 cable drops in issue for school safety and security purposes, did USAC decide incorrectly to seek recovery of the funds it disbursed to support their purchase? For the reasons set forth and discussed above and in our appeal, the answer to this question is a categorical "yes."

Unfortunately, the PN did not address this issue. Nor did it address the larger policy question, which is whether the Commission has changed course and decided for some reason no longer to consider school safety and security to be an educational purpose. If that is the case, it is important for the Commission to officially inform the E-rate community of that now, because that is not what is commonly understood.

B. All 54 Cable Drops Are Eligible For E-rate Support Because None Of Them Is Dedicated To A Single, Ineligible Application.

None of the 54 lines in issue here is dedicated exclusively to the transmission of video data from the video security camera connected to it. The video security cameras are connected to network jacks that are exactly the same as every other network jack on the school district's LANs, which means that any end-user device may be connected to any one of them at any time. Therefore the internal connections in issue should be eligible for E-rate support. Holding otherwise will welcome in new and unnecessary uncertainty into an already difficult and overly complex process, result in much more work for everyone involved in the E-rate application, payment, and compliance process, and frustrate applicants even more.

With one notable exception, all LAN cabling should be eligible. The exception should be for a dedicated line that an applicant uses for a purpose that is unquestionably

not “educational.”⁷ From a regulatory, policy, and administrative, and practical perspective, this makes perfect sense.

It’s a given that every digital end-user device connected to a network is ineligible for E-rate discounts – computers, VoIP handsets, video security cameras, white boards, copy machines, fax machines, etc. Therefore, with regard to whether any particular run of cable is or is not eligible, it should not make any difference what kind of device is connected to it, especially since those devices can be changed at any time. USAC disagrees however. In its Decision on Appeal, which the Bureau decided not to reverse, USAC stated, “cabling drops used for security cameras” are ineligible. USAC’s interpretation is wrong and unworkable.

Under program rules, all of the customary activities that occur on school property are performed for an educational reason, leaving extremely little activity that is not.⁸ Since every cable drop in every school is going to be used virtually or possibly even all of the time for an educational purpose, regardless of the device connected to it, it makes precious little sense to spend valuable time trying to ascertain how much time, if any, any of those drops will be or were used for a purpose that was not educational. What should only matter – except for in one specific instance -- is whether the cable drop was or will be installed on school property. The one exception of course should be for a run of cable dedicated to an activity that is clearly not educational.

Consider the consequences of LAN cabling not generally being eligible in the

⁷ See *Second Report and Order* (FCC 03-101, released April 30, 2003). 47 C.F.R. § 54.500(b) ([A]ctivities that are integral, immediate, and proximate to the education of students... qualify as “educational purposes.” Activities that occur on ... school property are presumed to be integral.).

⁸ *Id.*, noting that activities that occur on school property are presumed to be integral to the education of students and therefore undertaken for an “eligible purpose.” See also, definition of “Educational Purposes” published on USAC’s Website: “The customary activities that occur on school or library property are presumed to fall under the definition of educational purposes. Examples of eligible activities for schools include, but are not limited to, the school-related activities of school administrators, school counselors, school nurses, school technology workers, cafeteria workers, security guards, and school bus drivers.” (Emphasis added). <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/educ-purposes.aspx>

manner described above. USAC will be forced to spend an inordinate amount of fruitless time during the application review process quizzing applicants about how they intend to use all of their network jacks in the future, even though school networks and technology undergo change on a fairly regular basis, as does the manner in which schools use their valuable indoor space, where those jacks are located.

The number and type of end-user devices a school possesses is anything but static, and where in the school system those devices get deployed and who uses them also has a tendency to change. A network jack for a computer in a first grade classroom today could easily become a network jack for a video security camera tomorrow, a network jack for a wireless access point the following day, and a network jack for a VoIP telephone the day after that. A room in an elementary school might be used for a third grade classroom one year, a multi-purpose room the next, and a pre-K room the year after that. Divining all of this up front is impossible, and demanding funding back afterwards for using a cable drop for an allegedly ineligible purpose, which can be used at any time for any purpose, virtually all of which are eligible, is blatantly unfair and extremely counterproductive.

If LAN cabling is not generally eligible in the manner described above, schools will be shocked. They will also be disheartened, to say the least, to discover that they should have been, and now will need to start, keeping an accurate, daily record of the digital devices that administrators, teachers, staff, students, and visitors plug in and out of the hundreds, thousands, even tens of thousands of E-rate supported LAN jacks located throughout their systems. This is an impossible task to be sure, but there will be no other way for applicants to prove to USAC's and the program's auditors' satisfaction that they used every cable drop one hundred percent of the time for an eligible purpose.

If the rule is not as we outlined it above, we have to wonder: is USAC going to demand to see a service substitution every time a school wants to take one end-user device out of an E-rate supported drop and plug a different one into it? Will schools have to perform and submit to USAC an impossibly difficult cost allocation showing how much time each drop is likely going to be or was used for eligible and ineligible purposes? Quite frankly, this is an administrative nightmare waiting to happen, if the

Bureau does not step in now to clarify the rule or, at a minimum, reverse this decision.

Finally, we urge the Bureau to keep in mind that E-rate applicants now have Category Two budgets, which means that this interpretation of the rule is not going to affect how much funding the Commission will be able to make available to E-rate applicants, a concern that the Bureau raised in *Batesville*, a Category One case.

In short: (1) none of the 54 cable drops to which the school district's video security cameras are connected is dedicated exclusively to the transmission of video data from the camera connected to it; (2) each of the 54 cable drops can be used to connect any digital end-user device to the local area network; and (3) the school district has the option to use each of the 54 cable drops for any purpose that it sees fit, which, in all but the rarest of instances, are going to be uncontrovertibly "educational." Therefore, all of the cable drops should be eligible for this reason too.

III. CONCLUSION

For all of the reasons set forth and discussed above, FSG respectfully asks the Bureau to entertain this petition, reverse USAC's decision, and instruct USAC to take whatever other actions may be necessary to effectuate this result.

If for some reason waiving one or more of the program's rules is necessary to reverse USAC's decision to seek the recovery of funds, we respectfully request such a waiver. In these particular circumstances, where USAC reviewed and approved the request for discounts on the cable drops initially, presumably in a careful and cautious manner, thereafter paid the service provider's invoice, and has not accused either party of violating any other rule, and where the school district used the funds to help keep children and adults safe while at school and, moreover, reasonably believed the cable drops to be eligible, a waiver is warranted.

Respectfully submitted
on behalf of Facility Solutions Group, Inc.

/s/ Catherine Cruzan

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